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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-1208**

In re the Matter of:

Anoka County,  
Respondent,

vs.

Kadar Hersi,  
Appellant.

**Filed July 10, 2023  
Affirmed in part and reversed in part  
Cochran, Judge**

Anoka County District Court  
File No. 02-CV-21-533

Brad Johnson, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney,  
Anoka, Minnesota (for respondent)

Michael Cain, Kennedy & Cain, PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Frisch, Judge; and Smith,  
John, Judge.\*

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

## **NONPRECEDENTIAL OPINION**

**COCHRAN, Judge**

This appeal involves two separate overpayment notices issued by respondent-county to appellant, which require appellant to reimburse the county for Minnesota Child Care Assistance Program (CCAP) payments made by the county on behalf of appellant and his family. The commissioner of human services, after a hearing, upheld the overpayment assessments for the two time periods at issue: January 20 through March 1, 2020, and March 13 through May 8, 2020. The commissioner's decision with respect to each time period was subsequently affirmed by an order of the district court. On appeal to this court, appellant argues that the county failed to present sufficient evidence to meet the statutory standard for recoupment of CCAP funds under Minn. Stat. § 119B.11, subd. 2a(b) (2022) for either time period. Because substantial evidence in the record supports the county's recoupment of CCAP payments made during the later time period but not the earlier time period, we affirm in part and reverse in part.

### **FACTS**

Respondent Anoka County (the county) provided CCAP benefits to appellant Kadar Hersi and his wife to assist with childcare expenses for their eight children. The county made payments directly to the childcare center that the children attended. Hersi's wife also worked for the same childcare center, while Hersi was employed as a driver for Uber. Because Hersi's wife worked for the childcare center, Hersi and his wife were considered "schedule reporters" under CCAP rules. As schedule reporters, they were required to report any changes in employment to the county within ten days. Before turning to the

relevant facts leading to each of the overpayment notices and the subsequent proceedings leading to this appeal, we provide a brief overview of CCAP.

### *CCAP*

“CCAP helps low-income parents pay for child care” while the parents are working or preparing to work. *Kind Heart Daycare, Inc. v. Comm’r of Hum. Servs.*, 905 N.W.2d 1, 5 (Minn. 2017); *see also* Minn. Stat. § 119B.10, subd. 1(a)-(b) (2022) (providing that employed persons working an average of at least 20 hours per week and persons seeking employment may be eligible for CCAP assistance). The amount of assistance that a family receives depends on the family size and income, the age of the children, and the type of care the children need. *See* Minn. Stat. § 119B.13 (2022) (explaining different rates that may be paid to the childcare provider). After a family is determined to be eligible for the program, the county pays assistance to the childcare provider directly. Minn. R. 3400.0120, subp. 1 (2021). As noted above, families who are schedule reporters must report changes in employment within ten days. If the family fails to do so, the family may become ineligible (at least temporarily), and an overpayment of benefits may result. *See* Minn. Stat. §§ 119B.11, subd. 2a(b), 256P.07, subds. 3, 6 (2022). An “overpayment” is “the portion of a child care payment that is greater than the amount for which a recipient is eligible or greater than the amount that a child care provider should have received.” Minn. R. 3400.0020, subp. 33 (2021). An overpayment “must” be recouped by the county “if the overpayment benefited the family by causing the family to pay less for child care expenses than the family otherwise would have been required to pay under [CCAP] requirements.” Minn. Stat. § 119B.11, subd. 2a(b). In this matter, the county determined that Hersi failed

to timely report a change of employment in January 2020 and failed to timely report another change of employment in March 2020, resulting in two CCAP overpayment notices issued by the county.

#### *January-March Overpayment Notice*

The first overpayment notice issued by the county relates to the time period of January 20, 2020, through March 1, 2020. The county issued the overpayment notice after the county learned, through a letter seeking food support that Hersi submitted to the county by fax on March 3, that Hersi had not been working in January and February. Based on this information, the county determined that the Hersi family was ineligible to receive CCAP benefits for January 2 to March 1 because Hersi was not working. The county thereafter sent Hersi a written notice of action informing Hersi that he had received an overpayment of CCAP benefits and that Hersi was responsible for repaying the \$15,636.24 in CCAP funds that the county had paid to the family's childcare provider during that time period. After Hersi provided information showing he had worked through January 18, the county reduced the overpayment amount to \$11,800.68 and designated the applicable time period as January 20 through March 1. Hersi administratively appealed this overpayment determination to the Department of Human Services (DHS). That appeal was assigned docket number 238057.

#### *March-May Overpayment Notice*

The county also determined that the Hersi family received benefits that they were ineligible to receive between March 13, 2020, and May 8, 2020. The county made this determination after receiving a fax from Hersi on April 21, 2020, notifying the county that

he stopped working on March 11, 2020, because of COVID-19. The county determined that Hersi failed to report his change in employment within ten days of March 11, 2020. On July 1, 2020, the county notified Hersi of the overpayment determination and informed Hersi that he was responsible for repaying the \$15,695.38 in CCAP funds paid by the county during this period.<sup>1</sup> Hersi timely appealed this overpayment determination to DHS. That appeal was assigned docket number 236838.

#### *Administrative Appeal Proceedings*

A human-services judge (HSJ) held a joint hearing on both administrative appeals. The parties agreed to conduct the appeals consecutively, starting with docket 236838—the docket involving the county’s overpayment assessment for March 13 through May 8. Hersi’s wife, Hersi himself, and the county CCAP coordinator each testified. The HSJ also received a number of exhibits in that docket.

At the hearing, Hersi’s wife testified that she temporarily stopped working on March 19, 2020 due to the COVID-19 pandemic. She also stopped taking her children to the childcare center as of that same date, although the childcare center remained open. During this same time period, Hersi had trouble finding work as an Uber driver due to the pandemic and only worked two weeks in March. Hersi’s wife testified that she informed the county of these changes via telephone calls. The county submitted exhibits showing that Hersi’s wife called the county on April 1, 2020, and explained that she was not working, that Hersi only worked two weeks in March, and that they were not using

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<sup>1</sup> According to the district court order, the overpayment amount for March 13 to May 8 was later reduced by DHS from \$15,695.38 to \$3,932.16 “due to the COVID-19 pandemic.”

childcare at the time. The county informed Hersi's wife that it considered this to be a temporary break from employment.

On April 14, 2020, Hersi's wife called the county and stated that she had returned to work at the childcare center. A week later, the county received a fax from Hersi informing the county that he had stopped working on March 11, 2020. The county CCAP coordinator testified that the county considered this fax to be verification of a change in employment. The county informed the Hersi family on July 1 that they had been ineligible to receive benefits after March 11 due to the change in Hersi's employment.

Hersi testified about his work schedule in March. He explained that he tried to work during March, but that he was unable to find work as an Uber driver due to the COVID-19 pandemic. He testified that the last day he received income from Uber was March 11, but that he continued logging into the Uber application after that date in an effort to find work. The county worker then testified that, even if Hersi was seeking work with Uber, Hersi's family would still be ineligible for CCAP assistance during this time because Hersi was not maintaining a minimum of 20 hours per week of employment and had not reported reduced hours. An exhibit offered by the county showed that Hersi logged into the Uber application for a total of approximately 45 minutes between March 16 and March 23.

After the testimony in docket 236838 was completed, the HSJ allowed the parties to take a break before hearing testimony in the next appeal—docket 238057, involving the county's overpayment determination for the period of January 20 through March 1. However, the transcript of the hearing ends at the break. The HSJ appears not to have recorded any testimony taken after the break. Thus, the record before us contains no

testimony in docket 238057, but it does contain the exhibits that were received by the HSJ. Those exhibits include the county's initial determination that the family was eligible for assistance, the fax sent by Hersi on March 3 notifying the county that he had not been working, the notice of overpayment sent to Hersi for the period covering January 20 through March 1, the overpayment amount, employment documents from Hersi, a record of a phone call made by Hersi's wife to the county, Hersi's request for a hearing, Hersi's reconsideration request, and the CCAP manual.

Following the hearing, the HSJ submitted recommended orders regarding the overpayment assessments to the commissioner. The commissioner adopted both recommended orders. Each of the two orders concluded that “[b]ecause [Hersi] did not report he stopped working within the ten-day reporting deadline, the [county] was required to recoup the child care assistance benefits the family received when [Hersi] was not working.”<sup>2</sup> And while both orders accurately set forth the applicable standard for recoupment under Minn. Stat. § 119B.11, subd. 2a(b), neither order included any findings regarding whether that standard was met—namely, whether “the overpayment benefited the family by causing the family to pay less for child care expenses than the family otherwise would have been required to pay under [CCAP] requirements.”

Hersi requested reconsideration of both orders. Hersi made similar arguments for reconsideration of each order, arguing that the county failed to show that the family

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<sup>2</sup> Both orders contained this language, with the only difference being that the order corresponding to the March 13 through May 8 overpayment used the number “10” while the order corresponding to the January 20 through March 1 overpayment spelled out “ten.”

benefited from the assistance. To support his argument, Hersi emphasized that the county did not present any evidence showing that Hersi's children attended childcare during the relevant time periods. The commissioner denied Hersi's requests for reconsideration, concluding that, for both overpayment determinations, Hersi failed to report his change in employment within ten days as required. The commissioner also concluded that the county was not required to show that Hersi's children attended childcare during the relevant weeks to prove that the family benefited from the CCAP payments. The commissioner determined that "[e]ven if the children did not attend care, . . . the family would have benefited from the program by avoiding *potential* debt to the child care provider." (Emphasis added.)

Hersi appealed both decisions on reconsideration to district court. *See* Minn. Stat. § 256.045, subd. 7 (2022). The district court consolidated the appeals and heard oral arguments on March 22, 2022. After the arguments, the district court issued an order affirming the commissioner's decisions regarding the county's overpayment assessments for both time periods.

This appeal follows.

## **DECISION**

On appeal from a district court order affirming an overpayment determination, we independently review the commissioner's order(s) and do not defer to the district court's review. *See Verhein v. Piper*, 917 N.W.2d 96, 101 (Minn. App. 2018) (explaining the scope of judicial review of a commissioner's order denying an application for Minnesota Supplemental Aid). Our scope of review is governed by Minn. Stat. § 14.69 (2022). *Id.*



We may affirm, remand, reverse, or modify the commissioner’s decision if the decision is “unsupported by substantial evidence in view of the entire record as submitted.” Minn. Stat. § 14.69(e). Substantial evidence is defined as “(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than ‘some evidence’; (4) more than ‘any evidence’ and (5) evidence considered in its entirety.” *Rsrv. Mining Co. v. Herbst*, 265 N.W.2d 808, 825 (Minn. 1977); *see also Zahler v. Minn. Dep’t of Hum. Servs.*, 624 N.W.2d 297, 301 (Minn. App. 2001) (defining substantial evidence as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion” (quotation omitted)), *rev. denied* (Minn. June 19, 2001). With regard to agency decisions, we “adhere to the fundamental concept that decisions of administrative agencies enjoy a presumption of correctness,” acknowledging that “deference should be shown by courts to the agencies’ expertise and their special knowledge.” *Rsrv. Mining Co.*, 265 N.W.2d at 824.

Minnesota Statutes section 119B.11, subdivision 2a(b) provides that a county “must” recoup a CCAP overpayment from the family receiving benefits “*if* the overpayment benefited the family by causing the family to pay less for child care expenses than the family otherwise would have been required to pay under [CCAP] requirements.” (Emphasis added.) In contrast, the county must recover an overpayment from the provider “if the overpayment did not benefit the family by causing it to receive more child care assistance or to pay less for child care expenses” and the assistance “benefited the provider by causing the provider to receive more child care assistance than otherwise would have been paid on the family’s behalf.” Minn. Stat. § 119B.11, subd. 2a(e) (2022). A family or

childcare provider may challenge a county's overpayment and recoupment determination in a hearing before a HSJ. Minn. Stat. § 119B.16, subd. 1(a) (2022); Minn. R. 3400.0230 (2021). At the hearing, the burden of persuasion is on the county to show that the overpayment benefited the family or the childcare provider. *See* Minn. Stat. § 256.0451, subd. 17 (2022).

On appeal, Hersi challenges the district court's order affirming the commissioner's decisions on reconsideration in both DHS dockets after the hearing. He does not dispute the commissioner's findings that he failed to timely report changes in his employment. Instead, he contends that reversal is required because the hearing record lacks substantial evidence to demonstrate that his family benefited from the alleged overpayments during either time period as required by Minn. Stat. § 119B.11, subd. 2a(b). We address each overpayment determination in turn.

**I. The commissioner's determination that the Hersi family benefited from the overpayment between January 20 and March 1, 2020, is *not* supported by substantial evidence.**

Hersi argues that the county failed to meet its burden to demonstrate that the recoupment standard under Minn. Stat. § 119B.11, subd. 2a(b), was met for alleged overpayment between January and March 2020. We agree.

The commissioner concluded that the county met its burden to show that the Hersi family benefitted from the CCAP payments while Hersi was not working from January 20 to March 1. The commissioner reached this conclusion after the hearing even though the county presented no evidence that the children attended the childcare facility during this period. The commissioner concluded that the county was not required to make such a

showing to demonstrate that the Hersi family benefited from the payments. Rather, according to the commissioner, “[e]ven if the children did not attend care, . . . the family would have benefited from the program by avoiding *potential* debt to the child care provider.” (Emphasis added.) The commissioner thus determined that Hersi is responsible for an overpayment of CCAP funds by the county in the amount of \$11,800.68 for this period.

Based on our de novo review of the record, we conclude that substantial evidence in the record does not support the commissioner’s determination (or the district court’s similar determination) that the recoupment standard set forth in Minn. Stat. § 119B.11, subd. 2a(b), was met for this period of time. As noted above, to recoup CCAP payments from the family, the county is required to demonstrate that “the overpayment benefited the family by causing the family to pay less for child care expenses than the family otherwise would have been required to pay under child care assistance program requirements.” Minn. Stat. § 119B.11, subd. 2a(b). At the hearing, the county submitted exhibits showing that it paid CCAP benefits to the childcare provider and that Hersi failed to timely report a change of employment to the county in January 2020. But there is no evidence in the record that the Hersi family paid less for childcare expenses than the family otherwise would have been required to pay between January 20 and March 1 if the CCAP payments had not been made. There is no testimony or exhibits in the record showing that the children attended childcare during this time. Nor is there any evidence that spaces were being held by the provider for the children or that the family would have incurred expenses with the childcare provider if the CCAP payments had not been made. Thus, there is no evidence that the

family benefited by paying less than they otherwise would have been required to pay for childcare expenses. And, as discussed above, the county had the burden to demonstrate at the hearing that the alleged overpayment benefited the family in this manner. *See* Minn. Stat. § 256.0451, subd. 17. It failed to do so. Therefore, we reverse the commissioner's determination that Hersi is responsible for reimbursing the county for the \$11,800.68 in CCAP payments paid for the period of January 20 through March 1, 2020.

**II. The commissioner's determination that the Hersi family benefited from the overpayment between March 13 and May 8, 2020 is supported by substantial evidence.**

With regard to the second overpayment notice, the commissioner concluded that the Hersi family received an overpayment of CCAP benefits between March 13 and May 8, 2020, because (1) Hersi failed to timely report another change in employment and (2) the family benefited from the county's CCAP payments during this period while Hersi was off work. Here again, Hersi argues that the record lacks substantial evidence to demonstrate that the family benefited from these payments. With respect to this time period, we disagree.

Unlike the earlier time period, the record reflects that the family benefited because the children attended the childcare center for part of this later time period and also had spots reserved at the childcare center when they were not attending. At the hearing before the HSJ, Hersi's wife testified that the children attended the childcare center through March 19, but stopped going after that date due to the COVID-19 pandemic (although the childcare provider remained open). Hersi's wife did not inform the county that the children were not attending childcare until a phone conversation with a county worker on April 1,

2020. During the call, Hersi's wife explained that she was not working and the children were not attending childcare due to health concerns relating to COVID-19. The county worker thereafter submitted medical-absentee forms to the childcare center on behalf of the family, which reserved spaces for the children at the childcare center.

Two weeks later, on April 14, Hersi's wife informed the county that she was back at work at the childcare center. At this point, Hersi had not formally reported to the county his end of employment. On April 21, Hersi then reported that he had not been working since March 11 via a fax to the county. The county determined that the fax was an official report of Hersi's end of employment, and Hersi does not dispute this determination on appeal. The next day, on April 22, the county informed the family that their CCAP benefits were ending as of May 8. Shortly thereafter, Hersi's wife submitted an employment verification form to the county, informing them that she ended her employment on April 30 because the family no longer had childcare as of May 8.

Taken as a whole, the record shows that the Hersi children had spots reserved or were attending childcare between March 13 and May 8, 2020. Moreover, the record reflects that the county paid CCAP funds to the provider on behalf of the family during this period, which the family was not entitled to receive because Hersi was not working. Therefore, substantial evidence in the record supports the commissioner's determination that the Hersi family benefited from the overpayment in CCAP benefits that occurred during this time and the standard for recoupment under Minn. Stat. § 119B.11, subd. 2a(b),

was met for this period. Accordingly, we affirm the recoupment determination for the period of March 13 to May 8.

**Affirmed in part and reversed in part.**